

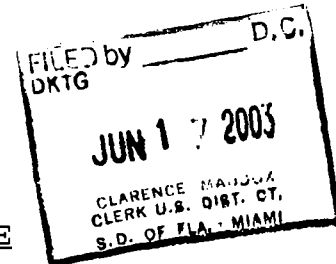
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-20912-CIV-UNGARO-BENAGES  
MAGISTRATE JUDGE P. A. WHITE

ANTHONY MITCHELL, :  
 :  
 Plaintiff, :  
 :  
 v. :  
 :  
 RONALD SCOTT LOWY, :  
 :  
 Defendant. :

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REPORT OF  
MAGISTRATE JUDGE



The plaintiff, Anthony Mitchell, currently confined in the Everglades Correctional Institution, has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. [DE #1]. He names as the sole defendant Ronald Scott Lowy, Esq.

The plaintiff alleges that Mr. Lowy, a private attorney, was retained to represent him in state criminal proceedings but withdrew from the case shortly before it began. The plaintiff alleges that Mr. Lowy's withdrawal caused him prejudice because had he not withdrawn the plaintiff would have the benefit of a more "defense-friendly" judge and would have had better representation. The plaintiff seeks monetary damages.

As amended, 28 U.S.C. §1915 reads in pertinent part as follows:

Sec. 1915 Proceedings in Forma Pauperis

\* \* \*

(e)(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that --

\* \* \*

(B) the action or appeal --

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\* \* \*

- (i) is frivolous or malicious;
- (ii) fails to state a claim on which relief may be granted...
- (iii) seeks monetary relief from a defendant who is immune from such relief.

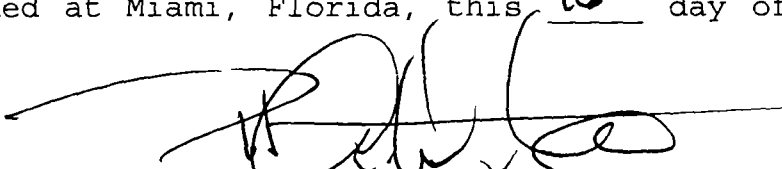
This is a civil rights action pursuant to 42 U.S.C. §1983. Such actions require the deprivation of a federally protected right by a person acting under color of state law. See 42 U.S.C. §1983; Polk County v. Dodson, 454 U.S. 312 (1981); Whitehorn v. Harrelson, 758 F.2d 1416, 1419 (11 Cir. 1985).

The defendant Lowy, a private defense attorney, is not amenable to a §1983 action based on a theory of ineffective assistance of counsel or malpractice. Neither private, retained attorneys nor public defenders generally act "under color of state law" and, therefore, claims against counsel are not cognizable under 42 U.S.C. §1983. See Polk County, supra. There is no allegation or indication that Attorney Lowy acted under the color of state law and thus he cannot be sued in this §1983 action.

Based on the foregoing, it is recommended that this complaint be dismissed pursuant to 28 U.S.C. §1915(e) (2) (B) (ii), and that the case be closed.

Objections to this report may be filed with the District Judge within ten days of receipt of a copy of the report.

It is so recommended at Miami, Florida, this 16<sup>th</sup> day of June, 2003.

  
UNITED STATES MAGISTRATE JUDGE

cc: Anthony Mitchell, Pro Se  
447259  
Everglades Correctional Institution  
P. O. Box 949000  
Miami, FL 33194-9000